REMARKS

Initally, Applicant expresses appreciation to the Examiner for the courtesies extended in the in-person interview held on March 18, 2008. The remarks and amendments made by this paper are consistent with the views presented to the Examiner during that interview. Accordingly, entry of this amendment and reconsideration of the pending claims is respectfully requested.

By this paper, claims 1, 8, 9, 11, and 18-20 have been amended, claim 5 has been canceled, and claim 21 has been added such that claims 1-4, 7-11, 13, and 15-21 remain pending, of which claims 1, 10, 11, and 18-20 are the only independent claims at issue.

The Office Action, mailed January 23, 2008, considered and rejected claims 1-5, 7-11, 13 and 15-20. Claims 1, 4, 5, 7-11 and 15-20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Tarbotton et al. (U.S. Patent No. 7,013,330), and further in view of Sugiarto et al. (U.S. Publ. No. 2002/0143952). Claims 2, 3 and 13 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Tarbotton in view of Sugiarto, and further in view of Moshir et al. (U.S. Publ. No. 2002/0100036).[1]

As discussed in the interview, the presently claimed invention is directed to regulating downloads in a computing system. Claim 1, for instance, recites a method for regulating the amount of bandwidth consumed by a plurality of download network connections by limiting the number of simultaneous connections to a download server. In the method a content-related request is communicated to a download service, and in response to the content-related request, download regulation data corresponding to an acceptance value and a time-window set containing at least one time value is received. Based on the acceptance value received in response to the content-related request a determination is made whether to request the content or whether to delay for a wait time before communicating another content-related request, the wait time corresponding to a wait time value in the time-window set. If it is determined that the content should be requested, the content is downloaded for not more than the duration of a download time, and if the download is not completed within the download time, the steps are repeated until the download is finished. If the determination is made to back off, the client will

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[1] Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should it arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

wait for a duration of time specified by the wait time before performing any further content related requests.

As discussed in the interview, the present claims are distinguishable over the cited art of Tarbotton and Sugiarto for at least the reasons that Tarbotton in combination with Sugiarto fail to teach or suggest that the download regulation data is received in response to a content related request and that the download must be completed within a download time as cited in combination with the other claim elements. For at least these reasons, Applicant respectfully submits that the presently amended claims are patentable over the cited art.

Tarbotton is related to controlling network downloads in order to conserve bandwidth. In Tarbotton, a message is broadcast telling clients that an update is available for download. The clients are prioritized with regard to when they receive their downloads so that critical elements may be updated before non-critical systems. When the non-critical systems are determined to received their updates, they generate a random number and compare it against a number contained in the original broadcast message to determine if they are eligible to download the update. In some embodiments, a time window will be specified in which the client must attempt the download of the update.

In Tarbotton, the download regulation data is contained in the original broadcast message, not in a message directed to a requesting client as currently claimed. Because the download regulation data is sent to the client prior to the clients performing a content related request, it is not possible that the download regulation data is sent in **response** to the request. Clearly Tarbotton fails to teach or suggest this claim element.

Furthermore, the claims require that if the download is not completed within the download time, then the client must submit a new content related request. The Office Action cites Tarbotton as teaching that the download must be completed within the download time. Applicant respectfully disagrees. The section of Tarbotton cited in the Office Action states that an attempt to download the update must be performed within a time window. An attempt to download the update is not equivalent to finishing the download within the download time. The attempt merely indicates that the download is starting, once the download begins, the client is downloading the content; the attempt has already been performed.

Furthermore, at least independent claim 12 and dependent claim 21 contain further limitations not found within the cited art. For example, both claims require that the same

download regulation data be provided to all clients that request it so that all clients have the same probability of downloading the content. Tarbotton, on the other hand teaches that different clients will have different priorities with respect to the update. In view of the fact that some Tarbotton clients are guaranteed to receive a download while others are only assigned a probability of an update, Tarbotton clearly fails to teach or suggest that all the clients have the same probability of an update.

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as the required reason why one of skill in the art would have modified the reference in the manner officially noticed.

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at (801) 533-9800.

Dated this 23rd day of April, 2008.

Respectfully submitted,

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